

ANDREW W. BERG

IBLA 80-286

Decided May 13, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declining to accept 29 mining claims for recordation and finding them to be abandoned and void. 3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

APPEARANCES: Andrew W. Berg, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Andrew W. Berg attempted to record location of 29 mining claims 1/ in purported compliance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the implementing regulations, 43 CFR 3833.4. In so doing, Berg filed a plat of the several sections of land on which the claims were located, with the claims depicted thereon. On the margin of the plat, in four columns, he listed the date of location of each claim, its name and the book and page where it was recorded in the records of Pend Oreille County, Washington. Also, in the plat margin he listed his name as "owner," and provided his address. This document was

1/ The claims are the Morningside Nos. 1 through 5, the Berg Nos. 1 through 14, and the Apex Nos. 1 through 10.

accompanied by a filing fee remittance, and a note signed by Berg asking, "Could this be filed as two sites?" and observing, "\$5 per claim seems excessive." ^{2/}

All of the claims were located prior to October 21, 1976 (the effective date of FLPMA), and therefore copies of their notices or certificates of location were required to be recorded in the proper BLM office on or before October 22, 1979. The plat, payment, and note were received in the Oregon State Office (the proper office) on October 22, 1979. By decision dated December 12, 1979, BLM returned the plat, note, and payment to Berg as unacceptable for recordation, and holding that the claims must be considered to be abandoned and void. Two reasons were expressed in the decision by BLM as the basis for its action, viz.:

1. A copy of the official record to the notice of location. Where an original notice of location cannot be shown, secondary evidence of location proving establishment of claims is acceptable where county records have been lost or destroyed or claims are established by occupancy. BLM Organic Act Directive 79-7 dated November 24, 1978. Philip Sayer, 42 IBLA 296, decided August 27, 1979.
2. A copy of the official record of the affidavit of assessment work or a notice of intention to hold the mining claims.

The BLM decision also noted that Berg's submission did not include secondary evidence of location in the form of a statement that the absent records had been lost or destroyed or that the claims were established by occupancy.

From that decision Berg has appealed. He also resubmitted the documents originally filed, plus copies of the claim location notices. These were received and date-stamped by BLM on January 2, 1980. He also submitted a single affidavit attesting to his performance of assessment work on all of the claims for the assessment year ending August 31, 1979.

Appellant states that a BLM publication entitled "Questions and Answers -- Recording of Mining Claims" has, at the end, a section in a boxed border entitled "Required Information." Appellant says that in preparing his first submission he followed this check list and supplied each of the ten enumerated items of information. He explains his failure to file copies of the location notices and proofs of labor

^{2/} The remittance was \$140. As there are 29 claims, this would appear to be \$5 less than the required amount. However, the BLM decision states that Berg provided "a \$5.00 service fee for each claim."

as follows: "Two elements were operative in this situation; the BLM instructions were not as clear as they should have been, and I should not have relied on the inscribed box of 'Required Information' alone."

Notwithstanding appellant's characterization of the BLM publication, that publication, the statute and the regulations all declare that a claimant in these circumstances must record his notices or certificates of location in the proper BLM office on or before the specified date, the failure to do which "shall be deemed conclusively to constitute an abandonment of the mining claim[s] * * *" (43 U.S.C. § 1744 (1976)). Because this consequence is statutory, it is operative as a matter of law, and conclusive in its effect. The Congress has not empowered the Department of the Interior to afford relief.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

